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CITY OF SAN DIEGO

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DOCUMENT NUMBER 2003-0037156
GREGORY J. SMITH, COUNTY RECORDER
SAN DIEGO COUNTY RECORDER'S OFFICE
TIME: 4:08 PM

(For County Recorder's Use Only)

COVENANT TO RESTRICT USE OF PROPERTY ENVIRONMENTAL RESTRICTION

THIS COVENANT AND AGREEMENT [Covenant] is made the 20 day of Dec., 2002, by and between Jose Alcaide Sierra [Covenantor or Owner], whose address is **2959** 38th Street, San Diego, California, and the City of San Diego [City]. Pursuant to Civil Code section 1471(c), the City has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section **25260**. The Covenantor and the City, collectively referred to as the "Parties," hereby agree that the use of the Premises be restricted as set forth in this Covenant. The Parties further intend that the provisions of this Covenant also be for the benefit of, and be enforceable by, the Department of Toxic Substances Control, California Environmental Protection Agency [DTSC], as a third party beneficiary, based upon the following facts:

WHEREAS, Jose Alcaide Sierra [Owner] owns all that real property located at 2959 **38th** Street, in the City of San Diego, County of San Diego, State of California, (APN: **454-611-39**) [Premises]; and

WHEREAS, burn ash has been detected on, at, and/or under the Premises (See Site Characterization Report and Human Health Assessment Forming Former Quince Street Burn Site, **38th**, 39th and Quince Streets, San Diego, California dated March 27, 2002, maintained by the City of San Diego Solid Waste Facility Local Enforcement Agency); and

WHEREAS, the burn ash may contain hazardous substances, including, but not limited to, lead; and

WHEREAS, burn ash sites are regulated in the State of California as solid waste disposal sites; and

WHEREAS, this Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Premises and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restrictions: (a) runs with the land pursuant to Civil Code section **1471**; (b) inures to the benefit of and passes with each and every portion of the Premises, (c) is for the benefit of, and is enforceable by the City and DTSC, and (d) is imposed upon the entire Premises unless expressly stated as applicable **only** to a specific portion thereof; and

WHEREAS, the City further concludes that the Premises, as remediated, and subject to the Restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment; and

WHEREAS, pursuant to Civil Code section 1471(b), all successive owners of the Premises are expressly bound hereby for the benefit of the City; **NOW, THEREFORE,**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the Owner grants to the City of San Diego, a municipal corporation, in the County of San Diego, State of California, its successors and assigns, this Covenant, and does, for himself, his heirs, successors, lessees, agents, employees, and assigns, declare, covenant, and agree:

1. Development on the Premises shall be restricted as follows:

- a. Prohibited Activities: On the Premises, there shall be no activities or projects that may result in digging, trenching, penetration and/or excavation of soil below the "Concrete Foundation of the Structure" (as defined in I.a.(i) below) and/or below three (3) feet beneath ground surface in the "Restricted Unpaved Areas" (as defined in I.a.(ii) below) and/or below three (3) feet beneath ground surface in the "New Concrete Pad" area (as defined in I.a.(iii) below)

without the express written approval of the City of San Diego Solid Waste Facility Local Enforcement Agency or its successor agency. Prohibited projects and activities may include, but are not limited to, subsurface swimming pools, spas or jacuzzis; utility trenches; landscape ponds or water features; foundations and/or footings for any construction work including, but not limited to, room additions, garage additions, basements, decks, gazebos, porches, walkways, play equipment, garden plots, patios and/or shade structures; planting holes for trees and shrubs; drainage facilities or systems; and footings and/or post holes for fences.

- (i) For purposes of this Covenant, "Concrete Foundation of the Structure" means that portion of the Premises which serves as the foundation of the enclosed portion of the existing dwelling. The "Concrete Foundation of the Structure" also includes existing hardscape improvements such as patios, driveways, slabs and walkways which are contiguous to or adjoining the enclosed portion of the existing dwelling. The "Concrete Foundation of the Structure" is depicted in the plot plan attached hereto as Exhibit "1."
- (ii) For purposes of this Covenant, "Restricted Unpaved Areas" means all that portion of the Premises beginning eighteen (18) feet east of the westernmost property line of the Premises and extending all the way to the easternmost property line of the Premises, excluding the "Concrete Foundation of the Structure" and the "New Concrete Pad" area. The "Restricted Unpaved Areas" are depicted in the plot plan attached hereto as Exhibit "1."
- (iii) For purposes of this Covenant, the "New Concrete Pad" area means that portion of the Premises directly to the east of the "Concrete Foundation of the Structure" and as depicted in the plot plan attached hereto as Exhibit "1."
- (iv) The plot plan attached as Exhibit "1" reflects encroachments including, but not limited to, fencing, hardscape, and/or landscape, extending from the Premises onto and/or enclosing City right-of-way west of the Premise's westernmost property line. The inclusion of that area in this covenant, is not intended to be, nor should it be construed as, either a consent to the encroachment or a waiver or release of any rights, past, present, or future, of the City of San Diego regarding such encroachment onto City right-of-way.

b. Exceptions: Notwithstanding the prohibitions described in section 1.a. above, this Covenant shall not apply to activities or projects, in violation of the above prohibited activities, which are necessary for the upgrade, replacement, repair or maintenance of the various utilities that exist at, or run through, over, or under the Premises. Should the Owners of the Premises determine or be advised that a utility upgrade, replacement, repair or maintenance project at the Premises is required and may result in penetrations of the ground surface beyond the depths allowed in this Covenant, the Owners shall so notify the City of San Diego Solid Waste Facility Local Enforcement Agency or its successor agency in writing and obtain its prior written approval before proceeding with any such activity or project.

- 2. Agencies authorized by applicable Local, State and/or Federal regulations governing burn ash sites, and acting in enforcement of such regulations shall have access to the Premises upon reasonable notice while such applicable regulations remain in existence.
- 3. All fees associated with required inspections of the Premises, by regulatory agencies enforcing regulations governing solid waste or other regulations associated with ash or burn dumps, shall be borne by the City of San Diego.

Date:

12/26/02

Owner:

Jose Alcaide Sierra

This is to certify that the interest in real property conveyed by this instrument to the City of San Diego, a municipal corporation, is hereby accepted by the undersigned officer on behalf of the City of San Diego, pursuant to authority conferred by Resolution No. R-296273 adopted by the Council of the City of San Diego on April 9, 2002, and the grantee consents to recordation thereof by its duly authorized officer.

Date:

Jan 10, 2003

For City of San Diego,

By:

Carol J. Chao

~~DeLance Mackenzie~~
Acting Deputy Director, Real Estate Assets Department

NOTE: NOTARY ACKNOWLEDGMENTS (FOR ALL SIGNATURES) MUST BE ATTACHED. PER CIVIL CODE SEC. 1180 ET. SEQ.

PLOT PLAN



APPROXIMATE SCALE
0 20 40

1 inch = 20 feet

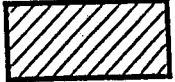


Drawn: 12/12/02
Ref: Block 143, Lot 3, 4 & 5, Map 1007, City Heights Amend-d
Right of Way Map, L.O. 45087

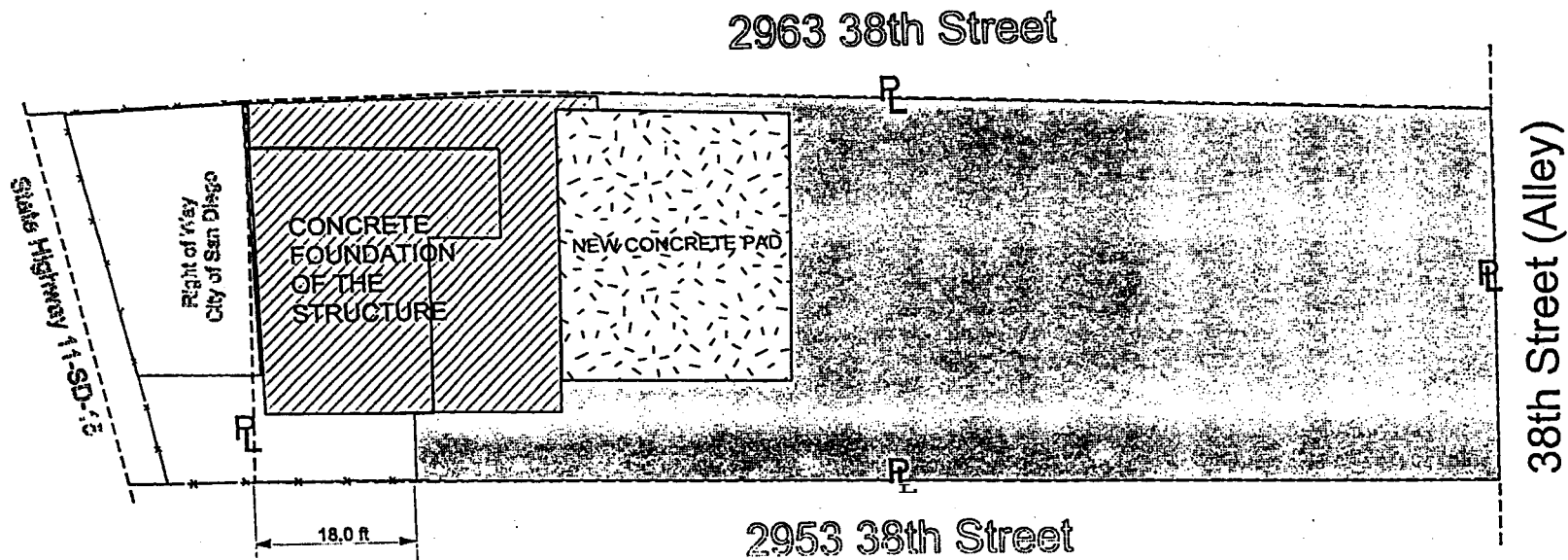
FOR REFERENCE PURPOSES ONLY

Covenant to Restrict Use of Property. Environmental Restriction Exhibit "1"

2959 38th Street
APN: 454-611-39

LEGEND

PROPERTY LINE	--&--	CONCRETE FOUNDATION OF THE STRUCTURE	
FENCE LINE	————	RESTRICTED 'AV' AREAS	
NEW CONCRETE PAD			



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SAN DIEGO

§§:

On Dec. 20, 2002 before me, Rosie L. Ford

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared JOSE ALEXANDER SIERRA

Name(s) of Signer(s)

☐ personally known to me

☒ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Rosie L. Ford

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: COVENANT TO RESTRICT USE OF PROPERTY

Document Date: Dec. 20, 2002

Number of Pages: 3

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer -- Title(s): _____
☐ Partner ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing: _____